

EXHIBIT

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION

BASF AGRO B.V.; MERAL LIMITED;)
and MERAL SAS,)
Plaintiffs,)
vs.)
CIPLA LIMITED; PETMEDS R US;) CIVIL ACTION NO.
GENERIC PETMEDS; PETCARE) 3:07-CV-00125
PHARMACY; ARCHIPELAGO SUPPLIERS;)
ARROWTARGET ENTERPRISES, LTD;) MAY 17, 2011
INHOUSE DRUGSTORE; and LISA)
PERKO,) MOTION HEARING
Defendants,) VOLUME II OF II
and)
VELCERA, INC., and FIDOPHARM,)
INC.)
Intervenors.)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE CLAY D. LAND,
UNITED STATES DISTRICT JUDGE

Proceedings recorded by mechanical stenography; transcript
produced by computer.

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1 until you get finished. All right?

2 THE WITNESS: Yes, sir.

3 THE COURT: Okay. We'll be in recess for at least 15
4 minutes.

5 (Recess taken for another matter to be heard.)

6 THE COURT: Be seated.

7 Okay. Let's resume with Mr. Stimart's
8 cross-examination of the witness.

9 MR. STIMART: Thank you, Your Honor.

10 BY MR. STIMART:

11 Q. Doctor, on direct examination, do you recall counsel asking
12 you about various properties that inert ingredients might have
13 on the formulation?

14 A. If by "properties" you mean "functions," yes.

15 Q. "Functions" is fine. And let's go through that list and
16 correct me -- tell me if I got this correctly or if I'm missing
17 one or added something to it.

18 I believe you mentioned efficacy?

19 A. Not -- I'm sorry, I'm...

20 Q. Could an inactive ingredient impact efficacy of a
21 formulation with a pesticide?

22 A. It could assist the active ingredient to be available to be
23 efficacious, if that's what you mean.

24 Q. So it could affect efficacy.

25 A. Of the active ingredient.

1 Q. Right. That's my question. You agree with that?

2 A. I would agree with that in general.

3 Q. It could also affect dissolution of the formulation;
4 correct?

5 A. Yes, it could. You need to choose your formulations
6 judiciously to allow the product to be efficacious.

7 Q. It could also affect penetration of the active ingredient
8 onto the -- onto the animal, for example?

9 A. Depending on the product that you're developing, you would
10 perhaps consider a penetration enhancer, yes.

11 Q. You also mentioned delivery. Is that is -- were you -- is
12 delivery the same thing?

13 A. Delivery is a broader term. The application, the actual
14 administration for the product, depending on what its need is,
15 yeah.

16 Q. And I believe you also mentioned metabolism. Is that
17 right?

18 A. Yes.

19 Q. What about aesthetics? Is the aesthetic quality of a
20 formulation also something that could be impacted by the inert
21 or inactive ingredients?

22 A. Yes.

23 Q. And by aesthetics, for example, odor. You don't want
24 something that --

25 A. It could be odor.

1 Q. I'm sorry. I didn't mean to interrupt you.

2 A. Yes, it could be odor.

3 Q. You don't want a product on the back of an animal -- a cat,

4 a dog, whatever it might be -- to smell, to be a bad-smelling

5 product.

6 A. An offensive smell may not -- may be something that you're

7 not particularly interested in, yes.

8 Q. And also in terms of aesthetics, you don't want to have the

9 hair on the dog or the cat, for example, to be clumpy and

10 matty; right?

11 A. You would prefer it not be, yes.

12 Q. That's an aesthetic quality?

13 A. It would be considered part of the aesthetics of the

14 product.

15 Q. And just so I understand, the -- what you put in, aside

16 from the active ingredients, could impact that; correct?

17 A. It could.

18 Q. And I think you just said, in one of your answers, that

19 it's important to judiciously pick the inactive ingredients for

20 a formulation. Is that right?

21 A. Yes, that's correct.

22 Q. So a lot of time and thought and energy go into that, on

23 what should be picked for a formulation.

24 A. It may.

25 Q. Have you done that, formulation picking inactive

1 substantially similar or identical to the FRONTLINE products so
2 that you could accelerate the EPA regulatory approval process;
3 right?

4 A. Exactly.

5 Q. Thank you.

6 Now, let's take a look at paragraph 19 of your
7 declaration.

8 Now, here you say that "Commercial manufacture of PetArmor
9 Plus began one month after EPA approval was issued." That
10 would have been in February of this year?

11 A. That's correct.

12 Q. First import was March 2011?

13 A. That's correct.

14 Q. First retail availability, April 11, 2011?

15 A. Week of April 11, yeah.

16 Q. Those products are currently available in Georgia. Are
17 they not, sir?

18 A. Yes, they are, as far as I know, yeah, unless they're out
19 of stock.

20 Q. And at the time you went commercial, if you will, with the
21 PetArmor Plus products, you were aware of this Court's
22 injunction, were you not?

23 A. Yes, we were.

24 Q. You were aware of the 329 patent, were you not?

25 A. Yes, we were.

1 Q. You did not at any point in time ever approach the Court to
2 ask for any interpretation or relief from the order, did you,
3 sir?

4 A. No, we did not.

5 THE COURT: What did you —

6 A. We had an assessment —

7 THE COURT: What did you think the order meant? Did
8 you think it meant that — why did you think y'all were in the
9 clear as far as the order was concerned? Is it that you
10 just — you let your lawyers look at it and they gave you that
11 advice or —

12 THE WITNESS: Well, they —

13 THE COURT: I don't want you to tell me specifically
14 what they said, but you made a conscious decision at some point
15 that this product was not contrary to the Court's order, was
16 not enjoined by the Court's order. Was that just that you
17 turned it over to your lawyers and said, "Can we proceed"?

18 THE WITNESS: Well, we did seek our lawyers' input
19 and counsel, certainly. It was my understanding that we did
20 not — we were not a subject of this injunction. And I've
21 already said that we did not need to respect the 329 patent
22 because of its invalidity in our eyes and that the manufacture
23 of this product to our specifications, customized in particular
24 to us, in India and sold in India, was not necessarily a
25 violation of the 329 patent, as I understand the law. And so